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# N. J. Meagher v. Uintah Gas Company et al : Answer of Respondent Meagher to Brief of Amicus Curiae

Utah Supreme Court

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Civil No. 7723

# In the Supreme Court

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N. J. MEAGHER,
*Plaintiff and Respondent,*

vs.

JOE T. JUHAN, PAUL STOCK,
RAY PHEBUS, et al.,
*Defendants and Appellants.*

## ANSWER OF RESPONDENT MEAGHER TO BRIEF OF AMICUS CURIAE.

---

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### PRELIMINARY STATEMENT.

Doubtless the Court has noted that *amicus curiae* fails to support his own suggestions that this decision fetters the oil industry, or has some bearing upon conservation, or runs counter to the interests of the State of Utah with respect to the development of its oil.

Lacking any showing with respect to the foregoing, we must assume that *amicus curiae* has no other interests in this decision than his concern that this Court is unable to decide a quiet title action.

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This is confirmed by the fact that, although the issues raised by *amicus curiae* in some instances vary slightly in form from those raised by appellants, in substance they are identical.

Respondent appreciates that mere repetition not only fails to aid, but adds to the burden of this Court. Yet, to avoid any inference that respondent concedes any point made by *amicus curiae,* this brief will again answer each matter touched upon by him, or will refer to the answers contained in the briefs on file.

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## STATEMENT OF POINTS.

1. There was no violation of the prior mandate of this Court.

2. The lessee's rights are divisible.

3. The document transferred Stock's interest in the lease to Meagher.

4. The cause of action now asserted by Meagher is not a departure from his original cause of action.

5. Two or more persons can own undivided interests in the exclusive right to drill for oil.

6. The document was supported by legal consideration.

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## ARGUMENT.

### 1. THERE WAS NO VIOLATION OF THE PRIOR MANDATE OF THIS COURT.

*Amicus curiae* cites cases holding that "where an appellate court disposes of the entire case by directing just what judgment shall be entered" no other matters can

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be passed upon by the trial Court. (*Helper State Bank v. Crus,* 95 Utah 320, 81 P. 2d 359.) Respondent takes no issue with this well established principle.

But in the first appeal this Court made no attempt to dispose of the entire case. In that opinion this Court referred to the transfers from Stock to Meagher, from Unitah Gas Co. to Meagher, from Valley Fuel Co. to Meagher, and from Phebus to Juhan. The Court expressly declined to pass on the legal effect of those documents saying "it may be that some of these transfers and assignments which, so far as the abstract is concerned, appear inconsistent, are in fact merely efforts to clear title by relinquishment of possible claims. They do not, however, affect the issue as submitted to us." In the face of this clear expression of the limited issues before this Court in the first appeal, *amicus curiae* sees fit to say: "on the first appeal the Stock paper was given *full* consideration and, notwithstanding its execution and delivery, the Court held the lease to be outstanding and Meagher's title subordinated thereto." (Emphasis ours.)

There is no question but that Meagher's title as landowner is subject to the lease. But *amicus curiae* misunderstands the issues presented on the first appeal if by "full consideration" he means that this Court made any effort to decide the legal effect of the quitclaim Meagher received from Stock. The first decision did determine that the lease exists. But it did not determine who owned it, or the extent of the interests of the various parties.

Following the first decision the following principle came into force, which *amicus curiae* quotes on p. 11 of his brief:

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> "When the judgment of a trial court has been reversed in an error proceeding, the court should retrace its steps to the point where the first material error occurred. It should put the litigants back where they were when the initial mistake was committed." (*Missouri K & T Trust Co. v. Clark,* 60 Neb. 406, 83 N.W. 202.)

This also is well established law, and it was followed precisely by the trial Court. Once the trial Court was instructed by this Court that the lease was valid, it retraced its steps to the point where the error occurred and continued this quiet title action for the purpose of determining what interests in the lease were owned by the litigants. Indeed, if this had not been done there would have been no judicial determination of appellants' own claims in the lease, a determination which they specifically asked the Court to make in their Counterclaims.

The mandate of this Court has been carried out.

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## 2. THE LESSEE'S RIGHTS ARE DIVISIBLE.

This subject has been urged by appellants and has been answered. The substantial values frequently encountered in oil properties naturally lead to extreme and elaborate division of interests. Appellants themselves have recognized the divisibility of these same lessee's rights by the various agreements they have made among themselves. (See Respondent's Answer to Petition for Rehearing, pp. 3-5.)

In *Allies Oil Co. v. Ayres,* 152 La. 19, 92 So. 720, in speaking of *co-lessees,* the Court said that they "occupied

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towards each other exactly the same relations as though they owned the land in common."

Moreover, "a tenant in common has the right to divest himself of his entire interest in the common property and thus bring into association with his former co-tenants one who has theretofore been a stranger to the title, and this he may do independently and without the consent of such co-tenants." (*Buchanan v. Jencks,* 38 R.I. 443, 96 Atl. 307.) This subject is discussed and additional authorities are cited in Respondent's Brief, pp. 30-32.

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### 3. THE DOCUMENT TRANSFERRED STOCK'S INTEREST IN THE LEASE TO MEAGHER.

This point has been presented by the parties in interest. (See Respondent's Brief, p. 69 et seq.). *Amicus curiae* repeats the argument that Meagher did not seek an interest in the property but merely sought to remove a cloud on his title. But a cloud on one's title is, or at least may be, an interest in the property. The only way the owner of a superior title can clear it is to acquire the interests of those who own, or claim to own, inferior titles. If the quitclaim which Stock gave Meagher did not pass Stock's interest in the property to Meagher, to whom did it pass? Certainly Stock gave it up. Appellants seem to argue that although Stock's interest passed out of him, it went to Phebus, who was Stock's co-lessee at the time. That would mean that a lessor seeking to clear his title from the claims of co-lessees would get nothing until he had received the quitclaim of the last co-lessee, for appellants must concede that if Meagher had received an iden-

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tical quitclaim from Phebus as he received from Stock, he would thereby have cleared his title of the entire lease. Certainly Stock did not quitclaim to Phebus when he made his transfer to Meagher. Thus it must follow that the transfer was a quitclaim from Stock to Meagher of whatever it was that Stock owned. Had Meagher succeeded in obtaining the same release from Phebus, he would have gathered in all outstanding lessee's rights, and the lease would have merged in Meagher's senior title. But having obtained a quitclaim from Stock alone, Meagher must and does recognize that the Phebus interest remains outstanding.

Meagher's rights, obtained from Stock, are in nowise inconsistent with, or antagonistic to, the rights of Phebus and his assigns any more than would have been the case if Stock had retained his interest but had declined to participate in the development.

A co-tenant may extract ore from the common property and sell it without the consent of his co-tenant, but he must account for the proceeds, less the reasonable expenses (*Silver King v. Silver King,* 204 Fed. 166).

Each tenant in common may sell his interest without regard to the wishes of the other. Thus, tenants in common who join in a contract to sell are bound even though some co-tenants did not sign and are not bound (*Ward v. Walker* (Tex. Civ. App.), 159 S.W. 320).

Owners of undivided portions of oil and gas rights are tenants in common and each may transfer his own portion without the consent of the other (*Moody v. Wagner,* 167 Okla. 99, 23 P. 2d 633).

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Each tenant in common has the right to alienate his own interest regardless of the wishes of his co-tenant (*Garner v. Anderson,* 67 Utah 533, 248 P. 496).

A tenant in common may assign his share of rents and profits without obtaining the consent of any co-tenant (*Knudson v. Powers,* 56 So. Dak. 613, 230 N.W. 282).

A co-tenant of oil and gas rights may convey his individual interest without the consent of other co-tenants (*Wolfe v. Stanford,* 179 Okla. 27, 64 P. 2d 335).

Respondent submits that *amicus curiae* has added nothing to the discussion of this point (See Respondent's Brief, p. 47 et seq., and Respondent's Answer to the Petition for Rehearing, p. 8 et seq.).

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**4. THE CAUSE OF ACTION NOW ASSERTED BY MEAGHER IS NOT A DEPARTURE FROM HIS ORIGINAL CAUSE OF ACTION.**

In raising this point, *amicus curiae* merely rephrases the issue as to whether the trial Court properly permitted Meagher to amend his reply (See Respondent's Brief, p. 11 et seq., and Respondent's Answer to the Petition for Rehearing, p. 5 et seq.).

While the issue was properly raised as a matter of pleading, it is questionable whether any amendment to the reply was necessary. The complaint claimed a fee title which includes all outstanding interests in the property. Under such claim a plaintiff may prove any title he owns, notwithstanding that it be less than a fee simple. Respondent submits that the issue presented by *amicus*

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*curiae* presents no new problem, and his argument affords no basis for revision of this Court's decision on the point.

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### 5. TWO OR MORE PERSONS CAN OWN UNDIVIDED INTERESTS IN THE EXCLUSIVE RIGHT TO DRILL FOR OIL.

On pages 21-22 of the brief of *amicus curiae,* he criticizes Paragraph 4 of the Conclusions of Law. He bases his criticism upon the startling assertion that "one cannot have an undivided one-half interest in the exclusive right to drill oil lands". This is grossly erroneous. If two people own oil lands, or an oil lease, they are tenants in common. Together they own the exclusive right to drill. But as co-tenants or co-lessees each owns an undivided one-half interest therein. This does not mean that either owns a right to drill which excludes his co-tenant.

Nor is there any confusion in the conclusions of law in this respect. Paragraph 4 clearly defines the lessee's rights and properly states that the lessee's rights include the exclusive right to drill for and produce oil and gas. The same paragraph states that Meagher owns an undivided one-half interest in the lessee's rights. There is nothing in the findings or conclusions or in the decision of this Court which grants to Meagher, as against his co-lessees, any exclusive rights to drill. Nor can the converse be found. However, in defining and determining who the co-lessees are, the decision does recognize that their collective rights, as against all others, include the exclusive right to drill for and produce oil.

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### 6. THE DOCUMENT WAS SUPPORTED BY LEGAL CONSIDERATION.

This point is covered by Respondent's Brief, p. 47 et seq. It is expressly covered in the opinion where authorities are cited augmenting those suggested in the briefs. *Amicus curiae* offers none.

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## CONCLUSION.

Respondent submits that *amicus curiae* has added nothing to the vigorous presentation of appellants' case. Nor has he even made an attempt to demonstrate that any principle is involved which may have any effect upon the development of the oil law of the State of Utah. There is none. Nor has he discussed any principle of general law with respect to which this Court requires his guidance.

Dated, April 27, 1953.

Respectfully submitted,

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